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IN THE

Supreme Court of the United States

October Term, 1959

No. 638

GERMANA E. PRAIDO DEL CASTILLO,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

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No.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the decree of the United States Court of Appeals for the Ninth Circuit entered upon November 19, 1959, affirming the decree of the District Court of the United States for the District of Arizona rendered upon December 12, 1958.

Opinion Below

The opinion of the District Court of the United States was not reported.

The opinion of the United States Court of Appeals entered upon November 19, 1959, is printed in an appendix to this petition, for the convenience of this Court.

Basis Of Jurisdiction

The judgments of the Court of Appeals for the Ninth Circuit were made and entered, as stated, on November 19, 1959. Application for stay of mandate pending application in this Court for writ of certiorari was made December 8, 1959, and an order staying the mandate for thirty days to January 11, 1960, was entered December 9, 1959.

Questions Presented

The questions presented here for determination are vastly important, but may be briefly stated:

1. Petitioner seeks to recover benefits of gratuitous life insurance on serviceman killed in World War II. The United States Armed Forces failed to notify death of insured at all. Petitioner had no knowledge of serviceman's death until after liberation of concentration camps and of Philippines when comrades of insured returned home in 1947, and executed affidavits telling of death of insured in battle of Bataan on April 3, 1942. Congress, mindful of condition of Philippines and handicaps confronting beneficiaries, extended by amendment the time for filing claims with Veterans' Administration to seven years in 1948.

Quare, whether by the amendment Congress has given Petitioner a cause of action, on filing within seven years, within the provisions of 38 U.S.C. §784 (formerly 38 U.S.C. §445, §817), upon a "disagreement," or curtailed her rights to redress in court?

2. Petitioner was resident of the Philippines during the hostilities and Japanese occupation. On liberation of Philippines, and until survivors of Death March of Bataan straggled back home, Petitioner could not file her claim for benefits with Veterans' Administration for absence of proof or information of death of insured; she could not

bring suit, since the law required as condition precedent filing of her claim with Veterans' Administration and be finally denied.

Quare, whether hostilities and Japanese occupation of Philippines constitute a condition as creating "disability" within the law provided?

Quare, whether Petitioner's cause of action accrued for purposes of the statute of limitations provided by the law involved when Petitioner learned of death of insured?

Statutes And Regulations Involved

38 U.S.C. §784 (formerly 38 U.S.C. §445, §817);

National Service Life Insurance Act of 1940, c.757, §602 (d) (3) (B), 54 Stat. 1014, as amended by Act July 11, 1942, c.504, §1, 56 Stat. 657 (formerly 38 U.S.C. §802 (d) (3) (B)

National Service Life Insurance Act of 1940, c.757, §602 (d) (5), as amended 54 Stat. 1014 (formerly 38 U.S.C. §802 (d) (5);

Senate Report No. 902, 1948 U.S. Code Cong. Serv. 1121

The pertinent portions of the statutes and the report involved are set out in the notes in the Appendix, infra.

The original paging of the decision of the U.S. Court of Appeals for the Ninth Circuit is retained in the Appendix to avoid confusion.

Statement

We adopt the following statement from the opinion of the United States Court of Appeals, Ninth Circuit:

"Appellant filed a claim with the Veterans' Administration on June 11, 1948 claiming to be the beneficiary of gratuitous life insurance deemed to have issued pursuant to the National Service Life Insurance Act of 1940 to a serviceman killed in action in the Philipupines on April 3, 1942. Appellant's claim

is based upon her contention that she was the last person to stand in loco parentis to the deceased serviceman. She was first notified that her claim had been denied on July 31, 1956. The reason given was that she did not fall within the restricted class of beneficiaries of National Service Life Insurance. Appellant appealed to the Administrator of Veterans' Affairs on June 18, 1957, which appeal was dismissed without consideration on January 8, 1958. On February 24, 1958 appellant filed suit in the district court. That court dismissed the action on the grounds that it was without jurisdiction because the six year period of limitations on actions on National Service Life Insurance claims had expired before the claim was filed with the Veterans' Administration.

"The provision of the National Service Insurance Act under which appellant made her claims limits the time within which such claims may be made before the Veterans' Administration to seven years from the date the insured serviceman dies . . . . The purpose of Congress in extending the time for filing claims was to assist persons in the position of appellant who had been residents of the Philippines during World War II and thus prevented from filing claims for National Service Life Insurance payments because of the Japanese occupation of the island."

We add the following pertinent facts from the record to make clear the situation:

The United States Armed Forces in the Far East failed to notify Petitioner or any nearest kin of serviceman's death or whereabouts, and Petitioner had no information concerning insured's death until liberation and serviceman's comrades returned home early in 1947 and gave their information in affidavits con-

cerning serviceman's death in action on April 3, 1942. By these affidavits of 1947 serving as proof of serviceman's death, Petitioner filed her claims with the Veterans' Administration in 1948.

Reasons For Granting The Writ

This case raises questions of vital interest to the nation, involving the stamina of its fighting men at critical situations and crucial times and is of particular importance to veterans and to the welfare of their families which has been the concern of Congress. At a time when the nation's defenses in global warfare shall involve recruiting peoples across the seas to the armed forces to fight the battles of this country, the questions for the consideration of the Court here have far-reaching consequences.

1. It appears that the court below has decided an important question of federal law concerning a Congressional amendment to the National Service Life Insurance Act which has not yet been settled by this Court. The United States Court of Appeals, in holding that amendment extending the filing of claims with the Veterans' Administration to seven years is not "coextensive" of the six year limitations, seems to have introduced a principle never dealt with by any other Circuit Courts nor by this Court. Besides this, the manner in arriving at its opinion, and the holding itself, are speculative. We feel that the Court below should have met the question raised by the theory advanced by Petitioner within the framework of the provisions of the statute involved. (38 U.S.C. §784).

The lower court obviously may have overlooked that, with the time limitation of six years for bringing suits in the district courts on such claims remaining constant, notwithstanding, the time limit of filing a claim with the Veterans' Administration, whether it be one year, five